

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Marine Polymer Technologies, Inc.

v.

Civil No. 06-cv-100-JD

HemCon, Inc.

O R D E R

Marine Polymer Technologies, Inc. moves, in limine, to preclude HemCon, Inc. from introducing evidence related to its non-infringement defenses. In response, HemCon agrees not to introduce evidence, statements, arguments or testimony to show that HemCon's products do not infringe the asserted claims of the '245 patent. HemCon notes that some evidence about its products and manufacturing processes may be relevant to show obviousness. HemCon also reserves the right to introduce evidence of noninfringement if Marine Polymer "opens the door," for impeachment, and for any other purpose the court may allow.

In addition, HemCon asserts that its "counterclaims for noninfringement of claims 1 -5, 8, 9, 13-16, 18, 19, 21 and 22 remain unresolved." HemCon states that it reserves the right to present "to the Court any and all admissible evidence, statements, arguments, or testimony related thereto or stemming therefrom."

With respect to evidence that will be presented to the jury, it appears that the parties agree that noninfringement is not an issue and that evidence pertaining to whether HemCon's products infringe the asserted claims of the '245 patent is not admissible.

To the extent HemCon raises counterclaims for noninfringement in its opposition to Marine Polymer's motion to preclude certain evidence, that issue cannot be resolved in this context. The court notes, however, that HemCon did not include counterclaims for noninfringement in its final pretrial statement or its "Roadmap of the Case."

Conclusion

For the foregoing reasons, Marine Polymer's motion to preclude noninfringement evidence (document no. 266) is granted to the extent that evidence of noninfringement is not relevant. The admissibility of evidence that may relate to noninfringement but

is offered to support HemCon's invalidity defenses must be assessed in the trial context.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

April 6, 2010

cc: Julie M. Baher, Esquire
Garet K. Galster, Esquire
Daniel R. Johnson, Esquire
Heather E. Krans, Esquire
Joseph A. Kromholz, Esquire
Lynda Q. Nguyen, Esquire
Brian M. Poissant, Esquire
Daniel D. Ryan, Esquire
Ognian V. Shentov, Esquire
Jonathan M. Shirley, Esquire
Daniel E. Will, Esquire
Leigh S. Willey, Esquire